

IN THE SUPREME COURT OF THE STATE OF DELAWARE

|                    |                                |
|--------------------|--------------------------------|
| DAVON JOHNSON,     | §                              |
|                    | § No. 537, 2011                |
| Defendant Below-   | §                              |
| Appellant,         | §                              |
|                    | § Court Below—Superior Court   |
| v.                 | § of the State of Delaware     |
|                    | § in and for New Castle County |
| STATE OF DELAWARE, | § Cr. ID No. 0704013046        |
|                    | §                              |
| Plaintiff Below-   | §                              |
| Appellee.          | §                              |

Submitted: October 25, 2011  
Decided: November 4, 2011

Before **HOLLAND, BERGER** and **JACOBS**, Justices

**ORDER**

This 4<sup>th</sup> day of November 2011, upon consideration of the appellant's opening brief and the appellee's motion to affirm pursuant to Supreme Court Rule 25(a), it appears to the Court that:

(1) The defendant-appellant, Davon Johnson, filed an appeal from the Superior Court's September 16, 2011 order, which denied as untimely Johnson's written objections to the Commissioner's July 26, 2011 Report, which recommended that Johnson's motion for postconviction relief be denied,<sup>1</sup> and also denied as untimely Johnson's motion to amend his motion for postconviction relief. The plaintiff-appellee, the State of Delaware, has

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<sup>1</sup> Del. Code Ann. tit. 10, §512(b); Super. Ct. Crim. R. 62.

moved to affirm the Superior Court's judgment on the ground that it is manifest on the face of the opening brief that the appeal is without merit.<sup>2</sup>

We agree and affirm.

(2) The record reflects that, in May 2008, Johnson entered a plea of guilty to Manslaughter, Attempted Robbery in the First Degree and Conspiracy in the Second Degree. A number of other charges, including Felony Murder, Murder in the Second Degree and several weapon charges, were dismissed by the State as part of the plea bargain. Johnson was sentenced to a total of 42 years of Level V incarceration, to be suspended after 25 years for decreasing levels of supervision. This Court affirmed the Superior Court's denial of Johnson's subsequent motion for sentence modification.<sup>3</sup>

(3) In this appeal from the Superior Court's order September 16, 2011, Johnson claims that a) he was coerced into accepting a guilty plea; and b) the Superior Court imposed his sentence with a closed mind.

(4) In its September 16, 2011 order, the Superior Court did not reach the merits of Johnson's postconviction motion because it found that Johnson's objections to the Commissioner's July 26, 2011 Report, which

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<sup>2</sup> Supr. Ct. R. 25(a).

<sup>3</sup> *Johnson v. State*, Del. Supr., No. 316, 2009, Berger, J. (May 10, 2010) (holding that there was no support for Johnson's claim that his sentence was unfair and based upon unreliable information).

were filed on August 26, 2011, to be untimely. Johnson does not dispute that his objections were untimely filed under either Del. Code Ann. tit. 10, §512(b) (1) or Superior Court Criminal Rule 62(a) (5) (ii). Nor do we find any support for such a claim in the record. We, therefore, conclude that the Superior Court committed no error or abuse of discretion in determining that Johnson's objections were time-barred.<sup>4</sup> Because the Superior Court did not reach the merits of Johnson's postconviction motion, we decline to address the claims Johnson raises in this appeal regarding his guilty plea and sentencing.

(5) In its September 16, 2011 order, the Superior Court also denied Johnson's August 29, 2011 motion to amend his postconviction motion as untimely because the Commissioner already had submitted his Report regarding Johnson's postconviction claims at the time the motion was filed. We find no error or abuse of discretion on the part of the Superior Court in so doing.

(6) It is manifest on the face of the opening brief that this appeal is without merit because the issues presented on appeal are controlled by settled Delaware law and, to the extent that judicial discretion is implicated, there was no abuse of discretion.

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<sup>4</sup> *Walker v. State*, Del. Supr., No. 87, 2007, Berger, J. (Oct. 11, 2007).

NOW, THEREFORE, IT IS ORDERED that the State's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Carolyn Berger  
Justice